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RESPONSE TO YOUTH REMAND FUNDING ARRANGEMENTS

ISSUED BY MINISTRY OF JUSTICE

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ABOUT THE MAGISTRATES' ASSOCIATION

The Magistrates' Association (MA) is an independent charity and the membership body for the magistracy.

We work to promote the sound administration of the law, including by providing guidance, training and support for our members, informing the public about the courts and the

role of magistrates, producing and publishing research on key topics relevant to the magistracy, and contributing to the development and delivery of reforms to the courts and the broader justice system. With over 12,000 members across England and Wales, we are a unique source of information and insight and the only independent voice of the magistracy.



BACKGROUND

Youth Remand Funding

The Magistrates' Association does not propose to comment on the best options for funding alternatives to custodial remand (Questions 4 to 14) but instead to offer the perspective of youth magistrates on the factors which impact their decision making. These considerations will be relevant to the future of funding for youth remand.

QUESTION 1

In your opinion, has the current remand funding supported alternatives to custody?

Custodial remand for children must only ever be used as a last resort.

The Magistrates' Association is aware and concerned about the high proportion of the youth custodial population that are in custody on remand. We are also aware of other trends including short periods of custodial remand for some children and racial disparity in the remand population. We fully support the aims of the Remand Review Working Group, of which we are a member, in addressing these concerning trends.

We consider that the successful efforts to reduce the criminalisation of children over the past decade have had a significant impact on youth justice practice, particularly on alternatives to custody. The move towards child first, diversion and other policy initiatives over the past decade have contributed to a lower youth custodial population and fewer custodial remands since 2008. We support the child first approach and have worked to embed a pro-social strengths based approach in the work of youth magistrates. We support the consideration of innovative solutions and options in both remand decisions and in pre-sentence reports in order to minimise the use of custody for children.

Diversion has promoted a reduction in the youth custodial population. However, the successful and welcome diversion of many children away from the criminal justice system means that those children who do appear before the courts, are those who have very complex histories and needs. The level of intervention required to effectively manage risks within this population poses a significant challenge for youth justice services across England and Wales. The interventions presented to youth courts must be robust in order to convince the court that risks can be managed effectively within the community. These changes have therefore increased the cost implications of alternatives to custody for youth justice services and local authorities. Whilst we support efforts to create a more efficient system for funding alternatives to custodial remand, we consider that the biggest funding challenge remains the overall level of funding available to youth justice services and the youth justice system more widely.

We also note that, due to the reduction in the volume of youth court cases in youth courts, individual magistrates and even local youth panels see very few instances of custodial remand. Only in metropolitan or urban centres do youth court magistrates see cases where custodial remand is considered more frequently. Our members who sit on youth panels in rural areas and notably in

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Wales have reported that the national remand statistics appear at odds with their personal experience sitting in youth courts where an instance of a custodial remand in youth court is vanishingly rare and alternatives to custody are common.

We therefore emphasise that it is vitally important to breakdown remand data by court type, by remand type and by region in order to establish a clear picture of trends across youth justice. We are concerned that failure to breakdown this data by region and court type may lead to inaccurate assumptions about how magistrates are making decisions which may misinform attempts to improve decision making processes. Whilst this consultation is focused on remand decision making, we also note that breaking down sentencing data in a similar way would also be beneficial to fully understand the ways in which sentencing decisions are being made.

We maintain however, that there will be some circumstances where custodial remand will be the only suitable option due to factors such as a history of absconding, seriousness of offending, risks in the community to the child and lack of available alternatives. It is important that custodial remand is an option where all other community options have either failed or are not suitable in all the circumstances.

We consider that a number of policies have promoted alternatives to custodial remand. We believe that Increased overall funding for youth justice services will improve the services ability to offer more and more robust alternatives to remand.

QUESTION 2

What type of bail with intervention or remand to local authority package do you think best meets the needs of children and protects the public? Do the community alternatives in your area meet demand?

Magistrates are always conscious that remand to custody must only be used as a last resort.

Where a child's offending behaviour fulfils all the conditions in the remand tests, the court is required to consider whether remand to custody is the only option that would provide adequate protection for the public or to prevent the risk of further imprisonable offences. Magistrates consider whether these risks can be managed in the community. All youth court magistrates undertake specific youth court training that shapes how youth court magistrates make decisions about the children who appear before the court.

The most appropriate alternatives to custody are those that are local to the child, have robust conditions and monitoring mechanisms, and packages that are sufficiently resourced in order to effectively manage risk within the community. We also note that the best community interventions occur where the child has a good relationship with the youth justice service local to them.

In order to properly assess whether risk can be managed in the community, as required under the remand test, magistrates must be presented with a full range of options and interventions. Interventions must be adequately resourced and robust enough to manage the risks identified by the court in considering all the circumstances of the child.

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Our members note that the high cost and intensive nature of some interventions that would be required in order to manage risk in the community means that local authorities and youth justice services struggle to put together a fully resourced robust package for a child in the timeframes required. The result of variable funding arrangements and other factors like accommodation availability, geography and staffing levels mean that at present, magistrates see a postcode lottery of alternatives to custody.

Other members have voiced concern that, in some areas, local authorities are over stretched which results in some children being placed in local authority accommodation far outside their local area. The result of this is that there are too many occasions when young people are housed hundreds of miles from family and established support networks. To a young person the setting can appear alien such as being moved from an urban area to a remote rural location, or vice versa. This can result in misbehaviour, absconding, and potentially further offending. Our members have reported cases of absconding that result from being placed far away from the family home. We also note that the best community alternatives are also where the youth justice services have a strong relationship with the child. Where magistrates are able to hear from representatives of the YJS about the community options available and their relationship with the child there is often greater confidence in the ability to manage risk in a community setting.

When community alternatives in the immediate local area are not always available, courts are left with fewer options to consider and fewer ways to manage risk within the community.

QUESTION 3

What influences the likelihood of community alternatives to custodial remand being presented to courts in your local area? Why do you think we have not seen a significant increase in the use of alternatives to custody?

The Magistrates' Association notes that there have been recent reforms designed to strengthen the test for youth custodial remand. We consider that the implementation of the new test and the associated training for youth court magistrates and legal advisers has not been in place for long enough for the impact to be evident in data emerging from the youth court. We note that the data should be kept under review but that the lack of time for the new test to bed in is at least one reason for there not yet being a significant increase in the use of alternatives to custody.

We also note that we remain sceptical of the approach taken by the Ministry of Justice and the Judicial College with regard to children remanded in Saturday courts. In the Remand Review Working Group, we raised the issue of children being remanded in a Saturday court. These courts are normally comprised of adult court magistrates and staffed by legal advisers who may not be trained in youth court practice. The proposed solution, which has now been rolled out by the Judicial College, was to train adult court magistrates and legal advisers in the youth remand tests.

We recognize that solution aims to partly address our concern. However, we do not consider that a panel of magistrates who have not been fully trained to sit in youth court should make decisions about children at all. The essence of our concern is that a lack of knowledge about youth court among a Saturday panel and legal adviser may impact outcomes for children appearing in Saturday courts. We note that the difference to the remand test for children is only one aspect of differing

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youth court practice that may impact outcomes for children. The different procedures youth courts follow such as different court layouts, addressing the child directly, enhanced training on communication difficulties and the role of youth intermediaries, and guidance on the use of secure docks in the Magistrates' Association youth court protocol all also have significant impacts for the way children's cases are presented to a court. We consider that it is essential, when hearing a youth case, that at least one member of the panel is fully trained in all these areas of youth court practice.

We consider that the better solution would be to ensure that all Saturday courts are comprised of at least one youth court magistrate and ensure that legal advisers are trained in all aspects of youth court practice.

We also urge the Ministry of Justice to further explore youth remand data and identify how many custodial remands are imposed by youth courts and how many are imposed by adult court panels hearing a youth court case, for example, a Saturday court. In addition to the proposal we make in response to Question 2, we consider that drilling down into the detail of the remand data such as by region and panel composition, is the best way to fully understand the drivers of the trends identified in the Remand Review. Only then will we be able to fully assess the impact of proposed solutions such as the training of adult court magistrates for Saturday courts and changes to youth remand funding framework.

